

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Replacement of Part 90 by Part 88 to)
Revise the Private Land Mobile Radio)
Services and Modify the Policies)
Governing Them)
)
and)
)
Examination of Exclusivity and)
Frequency Assignment Policies of)
the Private Land Mobile Radio Services)

PR Docket No. 92-235

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REPLY COMMENTS OF HEWLETT-PACKARD COMPANY

Hewlett-Packard Company ("HP"), by its attorneys, hereby replies to comments submitted in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding (the "Further Notice"). HP's reply addresses two points: First, there is no support for the Commission's proposals to auction or to impose "market-rate" user fees on private land mobile radio services operating in the 450-470 MHz band. Second, while recognizing the importance of doing so, most commenting parties have failed to address the steps necessary to create a secure place in the 450-470 MHz band for very low power uses, including critical care medical telemetry systems that currently operate on the 12.5 kHz offset channels.

As to the latter point, HP finds it particularly distressing that LMCC and others can suggest transition timetables that would appear to require hospitals providing life-saving care for cardiac patients to abandon their low power systems before the end of 1997.¹ It is inequitable to place such a burden on hospitals and other low power users while giving other users of the band at least until 2005, and then only in congested markets, to replace or modify their equipment. Furthermore, these proposed transition

¹ See, Comments of the Land Mobile Communications Council ("LMCC") at 12-13; Joint Pool Consolidation Proposal of the Personal Communications Industry Association and other trade associations (the "Joint Pool Comments") at 13.

plans suffer from an even more basic defect; they do not specify where displaced low power users could move or any other details about the displacement of these users.

There can be no meaningful consideration of transition timetables without any notion of the substance of the transition plan. HP understands that there are difficult questions that the frequency coordinators may not be able to address, let alone resolve, on their own without guidance from the Commission. Accordingly, HP urges the Commission to initiate a negotiated rulemaking proceeding to deal with these and other unresolved refarming issues.²

DISCUSSION

A. Neither Auctions Nor User Fees Should Be Imposed On Medical Telemetry Use In The 450-470 MHz Band.

The parties who filed comments on the Further Notice are united in their opposition to the use of auctions or excessive user fees for private land mobile operations on shared frequencies below 800 MHz³. The parties have emphasized that such proposals could jeopardize essential services that operate in these bands, at best freezing them in place; at worst, raising their operating costs beyond what many non-profit and other small users could afford. The parties also emphasize that the Commission neither has, nor under pending legislative proposals is likely to get, the authority to auction shared frequencies used for vital health and safety functions or to impose excessive user fees as a way of clearing the band of entities, such as hospitals, who cannot afford to pay "market rates" for the spectrum they employ.

As the Commission is well aware, the value of spectrum use cannot always be measured in monetary terms. The value of an EKG monitor to a heart patient, the difference in the time and ability to recover for a patient who is confined to a bed or who is able to walk in a hospital corridor, sometimes the difference between life and death, simply cannot be equated with the revenues that might be earned by another paging or two-way mobile service that might be willing to pay more to operate in the band.

² See, Letter to William F. Caton, Acting Secretary, PR Docket No. 92-235 (November 20, 1995). HP's call for such a proceeding to address low power issues is supported by SpaceLabs Medical, Inc. ("SpaceLabs") in its Comments, at 4.

³ See, e.g., LMCC Comments at 16-18; UTC Comments at 22-27; SpaceLabs Comments at 5-6; AAA Comments at 5-9.

B. The Substance Of A Plan For Low Power Use Of The Band Must Be Decided Before Transition Timetables Are Considered.

There is a recognition among the commenting parties that the 12.5 MHz offset channels serve vital communications needs, such as medical telemetry, that are incompatible with high power operations and that must be protected.⁴ With the exception of HP and SpaceLabs, however, no one has submitted a proposal for how these low power users may be accommodated while still achieving the Commission's goal for refarming, which is to preserve and protect existing uses of the PLMR bands while making more efficient use of the spectrum. Furthermore, the frequency coordinators have not yet responded to the proposed framework for addressing low power issues suggested by HP and SpaceLabs. Rather the coordinators primary focus has been on the consolidation of frequency coordination categories.⁵

It is unclear how, in the absence of a substantive resolution of the very difficult issues associated with low power operations in the band, LMCC and others can suggest what seems to be a completely arbitrary low power transition timetable. The substantive questions that first need to be addressed include the following: how many channels will be available for low power use; how many of these will be frequencies on which medical telemetry systems already operate; will a contiguous band of frequencies for low power use be created and, if so, when; what protection will be afforded against co- and adjacent channel interference from higher powered operations; will other high power systems be required to relocate and, if so, when; will relocation require a merely a crystal change or entirely new transmitters and receivers; particularly in the latter case, will there even be equipment available for use; and who will be asked to bear the economic and other relocation burdens of this "transition."⁶

⁴ See, e.g., LMCC Comments at 10. In addition to medical telemetry uses, other comments point to the importance of low power operations in industrial fields. See, e.g., Comments of Schlumberger Meter Communication Systems, Weyerhaeuser Company at 6-7.

⁵ While HP does not wish to become too deeply embroiled in the frequency pool consolidation debate — which as HP has urged need not dictate how a consolidated pool for low power operations might be created, HP does wish to voice its objection to UTC's proposal that a priority system among the pools be established, with "Business Radio" given the lowest priority, because of its alleged lack of critical function. UTC Comments at 4-22. While its location in the Business Radio Service may perhaps be due as much as anything to historical accident, medical telemetry use of the Business Radio Service offset channels serves critical life saving functions that are deserving of the highest priority of protection in any frequency pool consolidation scheme.

⁶ One option that should be explored in a negotiated rulemaking proceeding is having those who will benefit from the relocation of low power systems pay the costs of such relocation, as well as the costs of relocating high powered systems that may be necessary to create a secure region for low power operations in the band. Compare rules for microwave relocation, 47

Until these questions are answered, LMCC is premature to suggest a timetable for making such changes. Even so, given LMCC's proposal to allow existing higher powered systems to operate with their current equipment, on a primary basis, at least until 2005, it seems more than a little incongruous for it to suggest so little time for hospitals to change out their systems to an as yet to be defined frequency location.

This leads to another disconcerting aspect of the frequency coordinators' low power transition proposals. They seem to assume that the entire burden of addressing the low power issue should fall on low power users. As shown by HP and SpaceLabs, an efficient solution for low power use, which will also create more opportunities for higher powered operations, is to establish a contiguous band of frequencies for the exclusive use of very low power systems. To do so, some high power operations would need to be relocated, as well as some low power systems. LMCC's proposed transition timetable does not suggest any period by which some channels currently used for high powered operations might be transitioned over to low power use.

Furthermore, unless a contiguous low power segment of the band is created, these proposals, while short on specifics, seem to suggest nothing more than what HP has pointed out is a negative sum game. That is, each offset channel that is opened up for high-powered use results in the loss of multiple low power operations that cannot possibly share the same frequency and are left with no place to go in the band.⁷

CONCLUSION

While HP opposes the transition plans that have been proposed, HP also recognizes that it is difficult, if not impossible, for the private frequency coordinators to come up with a satisfactory solution to the low power issues on their own. It is for that reason, among others, that HP urges the Commission to take a active role in the on-going negotiation process that must be undertaken if refarming is to be successful. To

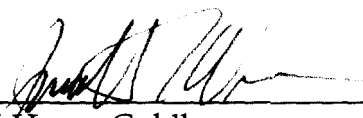
C.F.R. §21.50, and just announced rules for the transition of the upper 200 channels in the 800 MHz SMR band, 47 C.F.R. §90.699. First Report and Order, Eighth Report and Order, And Second Further Notice of Proposed Rule Making, FCC 95-501, PR Docket No. 93-144 et al., stated as released on December 15, 1995.

⁷ While HP is encouraged by the assertion of the Joint Pool Comments that under the LMCC plan, low power offset users will be protected and "no one will be harmed" (Joint Pool Comments at 3), unless a contiguous band of frequencies for low power use is created, HP does not see how this can be accomplished and still allow room for new higher-powered operations.

this end, HP urges the Commission to initiate a negotiated rulemaking in which the parties and the Commission can work together to achieve the Commission's and the industries' refarming goal.

Respectfully submitted,

HEWLETT-PACKARD COMPANY


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January 8, 1996


CERTIFICATE OF SERVICE

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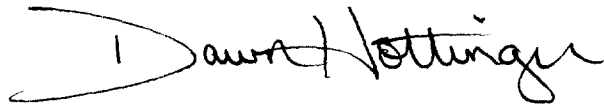
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A handwritten signature in black ink, reading "Dawn Hottinger". The signature is fluid and cursive, with a large initial "D" and a stylized "H".

/s/ Dawn Hottinger
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